



Bob Ferguson
ATTORNEY GENERAL OF WASHINGTON

Administration Division

PO Box 40100 • Olympia WA 98504-0100 • (360) 753-6200

November 22, 2019

The Honorable Steve O'Ban
102 Irv Newhouse Building
P.O. Box 40428
Olympia, WA 98504-0428

Dear Senator O'Ban:

I received your correspondence of November 11 asking that my Office recuse itself from the legal defense of Initiative 976.

You argue that my Office “must agree” that recusal is my “only option” on the basis of my Office’s legal defense of an excise tax passed by the State Legislature (with your support) and a campaign finance enforcement action against Tim Eyman.

Once again, you misunderstand the duties of the Attorney General’s Office. Additionally, you insult the dedicated public servants in the Attorney General’s Office who work hard every day on behalf of the people of our state. Consequently, I won’t accept your invitation to make Washingtonians pay to “hire outside legal counsel to defend the Initiative.”

When individuals or organizations challenge state laws, my Office defends those laws regardless of our personal opinion about the wisdom of the statute or the sponsor. In contrast, when the State is not sued, I am under no such obligation. Despite the simplicity of this concept, you continually struggle to understand the difference between my obligation to defend the State when it is sued and my Office’s responsibility when it is not sued.¹

My Office, after a referral from the Public Disclosure Commission, filed campaign finance enforcement actions against Tim Eyman. Initiative 976, however, does not belong to Tim Eyman. It belongs to the people of Washington state who adopted it. It is the people’s initiative now, and that is why we will defend it – vigorously.

¹ There is no statute or court decision that requires the Attorney General to intervene in a case whenever a state law is challenged. Rather, when the State is not a party to a case but one of the parties argues that a state law is unconstitutional, RCW 7.24.110 requires that the Attorney General be notified, and authorizes the Attorney General “to be heard.”



ATTORNEY GENERAL OF WASHINGTON

The Honorable Steve O'Ban
November 22, 2019
Page 2

As you know, we have defended initiatives sponsored by Tim Eyman in the past – to Mr. Eyman's apparent satisfaction. In defending I-1366 in 2016, he called my Office's legal defense "powerful and persuasive," stating that my legal team "methodically and meticulously defended I-1366 and completely decimated every single one of the opponents' arguments."

We are professionals, and this is our job.

You also reference the *Black* case as a reason to require recusal. In that case, my Office is defending legislation – which you helped pass – allowing Sound Transit to use the old valuation schedule instead of the current schedule that would mean lower car tabs.

I did not vote for that legislation. You did.

You now seem to regret your vote supporting higher car taxes. Your job is to explain that vote, and I can appreciate how challenging that is. My job is to defend the legality of legislation you helped pass.

You claimed in newspaper reports that you were "misled" by Sound Transit regarding the valuation schedule, but your colleague Senator Ericksen proposed a floor amendment on February 27, 2015, that would have amended the legislation to apply the current valuation schedule instead of the old schedule. During his floor speech, Senator Ericksen accurately conveyed the intent of his amendment to the body of the Senate. You did not speak up on the amendment, which failed to pass the then-Republican-controlled Senate.

You state that you "have been a strong advocate of car tab tax relief." Your voting record, however, demonstrates the opposite. In the future, I encourage you to read proposed legislation more carefully – particularly when that legislation can significantly increase the taxes of your constituents.

I did not personally agree with your decision to help pass the old valuation schedule in ST3, but I have defended its legality because that's my job. I take that responsibility seriously, whether it upsets political allies or opponents.

Similarly, I did not agree with your repeated failure to provide for adequate basic education for Washington students, but my Office defended that decision at the State Supreme Court – because that's our job.

I did not agree with your decision to refuse to fund the repair of fish-barrier culverts, but my Office defended that decision up to the United States Supreme Court – because that's our job.

ATTORNEY GENERAL OF WASHINGTON

The Honorable Steve O'Ban

November 22, 2019

Page 3

I have passionately opposed the death penalty all my adult life, but until the State Supreme Court struck down our state death penalty, my Office opposed the habeas appeals of death row inmates – because that's our job.

My Office has filed campaign finance lawsuits not just against Tim Eyman, but against numerous local Democratic parties, labor unions, and elected Democratic officials – including those I deeply respect like the former Speaker of the House – because that's also our job.

Perhaps if you were Attorney General, you would refuse to defend marriage equality or the Reproductive Privacy Act or other state laws enacted by the people of Washington that you oppose. That is, however, not how my Office operates.

I understand that our fidelity to our duty leaves me vulnerable to political opportunists hoping to get in the news by attacking me. I can handle that. What bothers me is when you attack the professionalism of the attorneys and professional staff in my Office.

When you accuse my entire Office of "bias," you are insulting the hardworking attorneys and professional staff who work every day on behalf of the people of Washington. These individuals could make significantly more money in private practice, but choose to work for the Attorney General's Office because they are deeply committed to public service. Many of the attorneys and professional staff in my Office, including leadership, worked under both Democratic and Republican Attorneys General. Why? Because their ultimate commitment is to the State, the people, and the law.

Former Attorney General Rob McKenna understands this. When asked by the Seattle Times whether my Office can adequately defend Initiative 976, he answered, "The lawyers in that office are highly professional. They take their responsibility for defending adopted state laws very seriously and they also hate to lose. So they'll go to court and give it their best effort."

He's right.

You should be thanking the employees of my Office for their public service, sacrifice, and hard work. Instead, you choose to attack them.

Sincerely,



BOB FERGUSON
Attorney General